

REMARKS

Claims 36-75 are present in the application. Of those claims, claims 36-45 have been withdrawn from consideration as being directed to non-elected subject matter. By this Response, claim 46 has been amended. No new matter has been added. Thus, claims 46-75 are pending on the merits.

Applicant appreciates the Examiner's reconsideration and withdrawal of the provisional, non-statutory, obviousness-type double patenting rejection of claims 46-75 based on claims 15 and 17-43 of U.S. Patent Application No. 11/123,173 to Gueret included in the Office Action of December 24, 2008. For at least the reasons outlined below, Applicant respectfully requests reconsideration and withdrawal of the claim rejections included in the final Office Action.

I. Rejection under 35 U.S.C. § 102(b) based on Desnos

Claims 46-62, 64, 65, and 67-75 were rejected under 35 U.S.C. § 102(b) based on U.S. Patent No. 6,174,319 to Desnos ("Desnos"). Final Office Action at 4. Claim 46 is the only independent claim included in that rejection. Although Applicant continues to believe that independent claim 46 is patentably distinguishable from Desnos for at least the reasons outlined in the Request for Reconsideration filed June 23, 2009, as supplemented herein, Applicant has amended independent claim 46 in order to expedite the issuance of a Notice of Allowance for the present application.

Independent claim 46, as amended, is directed to a device for packaging a cosmetic product and recites, *inter alia*, "a container containing a cosmetic product, wherein . . . the cosmetic product comprises a body care product, excluding depilatory waxes, epilatory waxes, and waxes having the ability to remove hair." Because Desnos

discloses an "epilatory wax container" (Abstract). Desnos does not disclose "a container containing a cosmetic product, wherein . . . the cosmetic product comprises a body care product, excluding depilatory waxes, epilatory waxes, and waxes having the ability to remove hair," as recited in independent claim 46.

For at least the above-outlined reasons, Desnos fails to disclose or render obvious all of the subject matter recited in independent claim 46. Therefore, Applicant respectfully requests reconsideration and withdrawal of the § 102(b) rejection of independent claim 46 based on Desnos, as well as the rejection of claims 47-62, 64, 65, and 67-75, which depend from claim 46.

II. Rejection under 35 U.S.C. § 103(a) based on Desnos

Claims 63 and 66 were rejected under 35 U.S.C. § 103(a) based on Desnos. Final Office Action at 3. Claims 63 and 66 depend from independent claim 46. Thus, claims 63 and 66 are patentably distinguishable from Desnos for at least the same reasons as independent claim 46. Therefore, Applicant respectfully requests reconsideration and withdrawal of the rejection of claims 63 and 66 under § 103(a) based on Desnos.

III. Conclusion

For at least the above-outlined reasons, claims 46-75 are allowable. Therefore, Applicant respectfully requests reconsideration of this application, entry of the amendment to claim 46, withdrawal of the claim rejections, and allowance of claims 46-75.

If the Examiner believes that a telephone conversation might advance prosecution of this application, the Examiner is cordially invited to call Applicant's undersigned attorney at (404) 653-6559.

Applicant respectfully submits that the final Office Action contains a number of assertions concerning the related art and the claims. Regardless of whether any of those assertions are addressed specifically herein, Applicant respectfully declines to automatically subscribe to them.

Please grant any extensions of time required to enter this Response and charge any additional required fees to our Deposit Account 06-0916.

Respectfully submitted,

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Dated: January 19, 2010

By: 
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